No. 517.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938.

GERRIT W. CLASON,

Appellant,

v.

STATE OF INDIANA,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA.

BRIEF FOR APPELLANT.

WILLIAM H. THOMPSON,
ALBERT L. RABB,
PATRICK J. SMITH,
Counsel for Appellant.



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THE OPINIONS BELOW.

The opinion of the Supreme Court of Indiana on rendition of the judgment appealed from is not yet officially reported. It will be found in 17 N. E. (2nd) 92; also in the Record at pages 24-29.

No opinion was given on the denial of rehearing: R. 30.

Two earlier opinions of the Supreme Court of Indiana in this same case, but on the first appeal to that

court, are not yet officially reported. The opinion of February 8, 1938, reversing the judgment of the Elkhart Circuit Court whereby appellant was discharged, and requiring him to stand trial, is found in 12 N. E. (2nd) 750; and in the Record at pages 5-8. The opinion of March 10, 1938, denying rehearing of the judgment of reversal, is found in 13 N. E. (2nd) 307; and in the Record at pages 8-11.

JURISDICTION.

Appellant has complied with Paragraph 1 of Rule 12 of the Rules of this Court; and probable jurisdiction was noted by this Court on January 3, 1939.

STATEMENT OF THE CASE.

This is an appeal from a final judgment (R. 24) of the Supreme Court of Indiana affirming a judgment of conviction in a prosecution by affidavit (R. 1) for unlawful hauling and transporting over a state highway of the State of Indiana into the State of Illinois of the body of a large dead animal not intended for human food, by appellant who did not and, for interstate commerce could not, hold a license for such transportation under Chapter 278 of the Indiana Acts of 1937, known as the Dead Animal Disposal Act (Appendix, page 23 of this Brief).

The case had already been before the Supreme Court of Indiana on an appeal by the State from a judgment sustaining a motion to quash the affidavit and discharging the defendant on the ground of un-

constitutionality of the said statute; on which appeal the Supreme Court of Indiana reversed such judgment and required the defendant (appellant here) to stand trial. Its accompanying opinion, dated February 7, 1938, upheld the said statute as a reasonable regulation, for the protection of public health and prevention of nuisances affecting interstate commerce only incidentally: R. 5; (12 N. E. 2nd 750). A petition for rehearing was denied with opinion, dated March 10, 1938, mentioning that in the exercise of its police power, a state may license and regulate the use of its highways even though such regulation may incidentally affect interstate commerce, and that the statute in question does not directly or materially place a burden on interstate commerce: R. 8; (13 N. E. 2nd 307).

The gist of the offense charged is the transportation in interstate commerce of the carcass of a dead animal not intended for human food, in violation of said statute (R. 2). There was no charge that the vehicle used or other circumstances of the transportation were unlawful; nor was there proof that the vehicle used or other circumstances of the transportation did or in any manner could injure the public health, tend to spread disease, or create a nuisance.

The statute in question (infra, p. 23) is entitled:

> "An Act to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect."

And its first section declares it to be the public policy of the State of Indiana:

> "to control and regulate the transportation over the highways of this state and the disposal of the carcasses of dead animals not slaughtered and intended for human food"

to the end that

> "the spread of animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such carcasses and from such transportation and disposal thereof"

through the exercise of the police powers of the State. It is Section 11-a of said statute that prohibits a person from hauling or transporting such carcasses over the highways of the State of Indiana

> "without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business."

The evidence was stipulated (R. 17-21).

It disclosed that appellant, a resident of the State of Indiana, bought and paid for a dead horse from its owner; loaded the carcass and transported it from the premises in Elkhart County, Indiana, where the death had occurred from causes unknown, over a public highway of the State of Indiana into the State of Illinois, on July 24, 1937 (R. 18).

At that time there were (and since have been) thirty-eight disposal plants located in Indiana and

licensed and operating under said statute. Their capacity and equipment was such that they could dispose of all bodies of large dead animals, not intended and slaughtered for human food, as should die within the State and be transported to such plants for disposal (R. 20). Nevertheless, appellant intended to and did transport such carcass from Indiana into Illinois where he sold it to an Illinois disposal plant, at a profit to himself, for conversion into grease and other commercial products (R. 19).

Appellant did not have any license or certificate issued under authority of said statute (R. 18); was not acting for any governmental official or agency and was not excepted or exempted from the statute by its terms (R. 18); was not acting for any one owning or operating an Indiana disposal plant under the statute (R. 18); and, under the provisions of the statute, he as such purchaser

> "could not have obtained a permit or license to haul or transport the body of any large dead animal, not slaughtered and intended for human food, over any public highway of or in the State of Indiana, into the State of Illinois or any other State, for sale or reduction there." (R. 20-21.)

In addition, there was evidence showing the necessity or desirability of regulation of the transportation and disposal of dead animals. The evidence disclosed that within five hours after death, decomposition starts; that unless disposal is had within tweny-four hours after death, the effects of an advanced state of decomposition will produce noxious odors and an unsightly appearance; that the majority of large animals die from disease; and such diseases may be spread

through seepage or drippings from vehicles, or by worms and rains if the carcasses have been buried (R. 19); that the transportation of carcasses in covered, cleansed, and sterilized vehicles tends to minimize spread of such disease, to prevent breeding of flies as carriers of such disease, and to prevent the creation of offensive odors and conditions; as does the burning, burial, or cooking of such carcasses at a disposal plant, properly constructed and supervised. (R. 20.)

There was no evidence that such carcasses had no commercial value and that there was not commerce therein. The Supreme Court of Indiana in the course of its last opinion said ". . . it may be conceded that the bodies of dead animals have a commercial value . . ." (R. 26.)

There was no evidence as to the percentage of carcasses of animals dying within Indiana that had been transported outside the State; no evidence that the Indiana disposal plants or any of them could not profitably operate if a substantial percentage of such carcasses should be exported from Indiana; and no evidence that the State would itself be required to engage in the disposal business because of present or future lack of disposal plants or facilities.

There was no evidence that the State by its State Veterinarian could not adequately police the highways and cause the inspection of all vehicles used in transporting carcasses, their cleansing and disinfection, whether such vehicles were destined for points inside or outside of the State, or had come from points outside the State. To the contrary, the evidence was that the State had and now has a State Veterinarian "and

such facilities for the enforcement of the statute" as are required by its terms (R. 20).

Appellant was found guilty as charged (R. 14); his motions in arrest of judgment and for a new trial, specifying in detail the asserted unconstitutionality of the statute, were overruled (as his motion to quash had been) (R. 14-15); and judgment was entered accordingly (R. 15).

On appeal, the Supreme Court of Indiana affirmed such judgment, and, by opinion dated November 1, 1938, (R. 24; and 17 N. E. 2nd 92), again upheld the constitutionality of the said statute, as against its asserted violation of the commerce clause; this time upon the grounds that the State in the exercise of its police power could prohibit interstate transportation of carcasses by a plan allowing profitable intrastate transportation in order to relieve the State of the necessity of setting up and operating its own disposal plants, and that adequate inspection against interstate transportation was impracticable and therefore the statute was a reasonable quarantine against bringing contaminated vehicles into the State.

Rehearing being denied without opinion (R. 30), appeal was taken to this Court.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

The eight assignments of error (R. 36-38) are all relied upon.

They may be summarized into one proposition:

The Supreme Court of Indiana erred in holding that the Indiana Dead Animal Disposal Act of 1937 was valid as a reasonable regulation or quarantine and not invalid as a discriminatory prohibition of interstate commerce in commodities recognized as legitimate articles of intrastate commerce, contrary to Article I, Section 8, Clause 3, of the Constitution of the United States.

SUMMARY OF ARGUMENT.

The gist of the offense for which appellant was convicted was the transportation in interstate commerce of the carcass of a dead animal not intended for human food, in violation of the Indiana Dead Animal Disposal Act of 1937. Appellant could not by any compliance with the terms of such Act have obtained a license for and engaged in the interstate transportation of carcasses. Such Act extinguishes and prohibits interstate commerce in carcasses, but regulates and sanctions intrastate commerce therein. While the regulation of all traffic in carcasses is fairly within the police power of the State, so long as the statute is not aimed at interstate commerce, does not impose a direct burden on it or discriminate against it, bears a reasonable relation to the legitimate purposes of the enactment, and does not conflict with any federal legislation, yet to prohibit is not merely incidentally to affect interstate commerce, when intrastate commerce is not prohibited likewise. The prohibition of interstate commerce in carcasses has no reasonable relation to regulation of intrastate commerce therein: every declared purpose of the enactment, viz., the limitation of the spread of disease, the protection of the public health,

and the prevention of nuisances, could be accomplished by identical regulatory provisions for interstate and intrastate commerce alike. It is no answer to assert that it is impracticable to inspect interstate commerce: the State could itself render it practicable by an adequate appropriation, were there any basis of fact in the record for such an assertion. And if commerce is permitted to any extent, though regulated, then it must be permitted for all, both in interstate and intrastate commerce; for the State must be fair to all,—not merely to its own citizens. The State did not divest carcasses of the attributes of property, but permitted profitable intrastate commerce therein. Even though the motive (if that be material) for enactment of the statute in question was to enable Indiana citizens profitably to operate disposal plants so that the State would not itself be compelled (assuming there were any basis of fact in the record for such an assumption) to set up and operate disposal plants, nevertheless if carcasses remain as articles of commerce, commerce therein must be open to citizens of all States; else there is discrimination, violative of the commerce clause of the Constitution.

ARGUMENT.

Appellant was charged and convicted of a misdemeanor for violation of Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana (the Indiana Dead Animal Disposal Act; page 23 infra), in that on a specified date he, without a license thereunder, unlawfully transported over a named public highway in the State of Indiana to a disposal plant located in the State of Illinois a dead horse which had not been slaughtered for human food.

The evidence proved that he transported the carcass as charged (R. 18); but it also disclosed that under the provisions of said statute, he could not have obtained a license for transportation of a carcass into Illinois or any other State (R. 20-21).

There was neither charge nor proof that the vehicle or other circumstances of the transportation were unlawful. There was neither charge nor proof that the vehicle or other circumstances of the transportation did or could (in the language of the statute) injure the public health, tend to spread animal diseases, or create danger, annoyance, or a nuisance.

From the outset of the litigation appellant has asserted that the statute under which he was charged, and then convicted, was invalid as a prohibition and not a regulation of interstate commerce in legitimate articles of commerce in which intrastate commerce is sanctioned by the same statute; contrary to Article I, Section 8, Clause 3, of the Constitution of the United States.

It is not to be doubted that the statute *prohibits interstate commerce* in carcasses. The requirement is

that the carcasses be disposed of either by the owner or person entitled to the carcass causing it to be buried within twenty-four hours after knowledge of death, or to a person licensed under the statute to dispose of it (Section 12; infra, page 37). No license is to be issued to any person solely for the purpose of transporting such carcasses; but transportation must be done solely by persons holding a license for disposal plants located in Indiana (Section 11-b; infra, page 35). No person except a licensee or his agent may transport such a carcass over any highway of this State or dispose of it to any person (Section 4-a; infra, page 26). And specifically:

> "No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies *are being transported to a disposal plant located in this state* and operated by a person holding a license to engage in such business." (Section 11-a; our emphasis.)

Nor is it to be doubted that the statute in question *permits intrastate commerce* in carcasses of animals not slaughtered for human food. The statute does not deprive or purport to deprive carcasses of their character as property, and hence does not prevent them from being the subject of ownership and commerce. The statute does not attempt to prohibit all traffic in bodies of dead animals, or even intrastate traffic therein. Nowhere does the statute condemn or prohibit the sale and transportation of carcasses within the boundaries

of Indiana. Representatives of the several disposal plants in Indiana are entirely free to bid against each other to obtain or purchase carcasses from farmers and other owners. There are thirty-eight disposal plants in Indiana now (R. 20), and there can be as many additional plants as meet the qualifications of the statute with respect to plans and specifications (Sections 9-a and 10-a; infra, pages 32 and 34). The statute does not purport to divide the State into districts, one for each of a limited or fixed number of disposal plants, nor require that dead animals be disposed of within a certain district. In other words, the business of disposing of dead animals is regulated, but it is still a business, i. e. an activity conducted for gain, in which the owners of Indiana disposal plants compete against one another. Thus intrastate traffic in carcasses is recognized, sanctioned, and regulated. Had the Legislature intended to prohibit all traffic in dead bodies of animals, had it intended to divest such carcasses of all attributes of property, such an intent could have been expressed in an unmistakable manner; and the word "regulate" would not have been used. But as enacted, the statute purports to be nothing but a regulatory measure. It is entitled "An Act to control animal diseases and regulate the transportation and disposal of the bodies of dead animals," etc. (infra, page 23); and its first section declares it to be the public policy of the State of Indiana "to control and regulate" the transportation over the state highways and disposal of carcasses of dead animals, etc. (infra, page 23). Therefore the statute in no sense is to be construed as prohibiting intrastate commerce.

Thus the statute has a dual nature: while pre-

scribing standards to be observed in transporting and disposing of carcasses, the statute restricts the sale of carcasses to licensed operators of disposal plants located in Indiana and not elsewhere. Under the terms and operation of this statute, it is impossible for citizens of other States to obtain carcasses from Indiana; and it is impossible for citizens of Indiana to sell and transport carcasses to citizens of other States, although in such transportation every other provision of the statute, every regulatory requirement prescribed, is complied with. Thus it was stipulated at the trial (R. 20) that "Under the provisions of Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, said Gerrit W. Clason could not have obtained a permit or license to haul or transport the body of any large dead animal, not slaughtered and intended for human food, over any public highway of or in the State of Indiana, into the State of Illinois or any other State, for sale or reduction there."

In other words, the statute regulates intrastate commerce but extinguishes interstate commerce.

There may be *regulation* without offense to the commerce clause. If a regulatory statute is not aimed at interstate commerce; does not impose a direct burden upon it; makes no discrimination against it; is fairly within the range of the police power of the state; bears a reasonable relation to the legitimate purpose of the enactment; and does not conflict with any federal legislation: then it is valid though it may incidentally affect interstate commerce.

Insofar as this statute prescribes the kind of vehicles and the manner in which (but not the places

to or from which) carcasses may be transported over the highways of this State, the statute appears to be within the scope of the police power; does not conflict with federal legislation; and bears a reasonable relation to the declared purpose of the enactment, viz: the limitation of the spread of animal disease, the protection of the public health, and the prevention of nuisances.

If the regulatory provisions of this statute apply to the transportation of carcasses intended for shipment across the state line as well as to transportation solely within the State, then the statute would regulate all transportation, interstate as well as intrastate; and its effect upon interstate commerce would be truly incidental. And, if interstate and intrastate traffic were treated alike, there would be no discrimination against interstate traffic as such; no burden placed upon it; and the statute would not be directed against it.

But in terms that are unmistakable the statute limits traffic in carcasses to intrastate traffic, and prevents and extinguishes interstate traffic. Its effect upon interstate commerce is not incidental to regulation: there is not *regulation* but *prohibition* of interstate commerce. And there is prohibition of interstate commerce because compliance with all regulatory requirements will not permit, and under no circumstances whatever will the statute allow, transportation of carcasses outside the State. Such prohibition of interstate commerce has no reasonable relation to the declared purposes of the statute. Every such declared purpose—the limitation of the spread of disease, the protection of public health, and the pre-

vention of nuisances—could be achieved by applying the regulatory provisions of this statute to *all* commerce, and eliminating the restriction of sales to Indiana plants alone. If carcasses are transported over the highways of Indiana in the vehicles and under the circumstances prescribed by the statute, it is to be presumed that the limitation of the spread of disease, the protection of public health, and the prevention of nuisances, have been accomplished to the degree contemplated by the statute. No other or different safeguard should be necessary if such vehicles, instead of stopping short of the State line, crossed it in order to complete sales and deliveries of carcasses.

The vice of this statute is not in the fact that it regulates, but that it discriminates. Its regulatory provisions apply only to intrastate commerce, because interstate commerce in carcasses is forbidden. If the statute regulated all traffic in carcasses, interstate as well as intrastate, there would be equal treatment and no discrimination.

The Supreme Court of Indiana, however, justifies this discrimination by holding, as one reason, that regulation of all traffic, both interstate and intrastate, is impracticable; hence regulation of intrastate commerce and prohibition of interstate commerce is reasonable. Witness this excerpt from its opinion of November 1, 1938, (R. 28):

> "It is no answer to this problem to say that the state might impose like standards for vehicles used in interstate transportation as are required by the terms of the act. The impracticability of adequate inspection would defeat the ends sought and would

> place upon the state veterinarian, or some other public agency, the burden of constantly policing every one of the many public highways leading into the state. The provisions of the act against interstate transportation may therefore be considered as in the nature of a quarantine against the bringing into this state of contaminated vehicles that have been used in the transportation of dead animals. We believe that such a quarantine is justifiable and reasonable; that it bears a direct relationship to the objectives sought by the act considered as a whole, and that any interference with interstate commerce is merely incidental."

The asserted impracticability of adequate inspection in order to enforce regulations that would apply to interstate commerce as well as intrastate commerce, is purely conjectural. There was no proof that the State Veterinarian could not enforce his regulations against all traffic in carcasses, irrespective of the destination of the vehicles used. It is not reasonable to suppose that the legislature would provide for regulation of all commerce and yet fail to make an adequate appropriation for enforcement of such regulation. Indeed, under the present statute vehicles engaged in interstate commerce in carcasses are subject to stoppage and their drivers to arrest. It was stipulated that the State Veterinarian had such facilities for enforcement of the statute as its terms required (R. 20). The inference is that if vehicles used for transportation of carcasses are stopped for inquiry as to their destination or point of departure, they could as easily be stopped for purposes of inspection.

But there is a more fundamental objection to the

position taken by the Supreme Court of Indiana in order to justify prohibition of interstate commerce while allowing intrastate commerce under the same statute. A State that enacted discriminatory legislation cannot justify discrimination by a situation which it can itself correct and control. If it be surmised that inspection of all traffic would be more expensive than inspection of intrastate traffic alone, the State can cure that defect by a larger appropriation. If it be conjectured that regulation of all commerce requires more officials than regulation of only intrastate commerce, the State can remedy that situation by providing more officials. But in no such event should the State be permitted to take advantage of its own insufficient action in order to justify discrimination against interstate commerce. If such facilities as the State may employ to enforce a quarantine or inspection measure applicable to all commerce are inadequate, the result may be unfortunate, but not unfair. The obligation imposed upon the State by the commerce clause is that enforcement under the police power must not be discriminatory even though it be not so complete as desired. Conjectural or actual impracticability of complete regulatory enforcement is no excuse, under the Constitution, for prohibition of interstate commerce in commodities, regulated traffic in which is permitted within the boundaries of the State. Compare: Schollenberger v. Pennsylvania, 171 U. S. 1, 12; 43 L. ed. 49, 53.

The other reason given by the Supreme Court of Indiana in its last opinion, for holding the statute constitutional although interstate commerce is prohibited for the benefit of intrastate commerce, is, in short, this: The State itself could have divested car-

carcasses of all attributes of property, and itself have set up and operated disposal plants for disposition of carcasses; but the State is relieved from the burden of setting up and operating disposal plants by the device of making it profitable for Indiana citizens to operate privately owned disposal plants, by giving them the right to handle all carcasses to the exclusion of non-resident traffic therein; therefore discrimination against interstate commerce is justified, and the statute is valid. (R. 27-28). Quoting:

> "But one question remains, and that is whether the state, in the exercise of its police power, may prohibit the interstate transportation of dead animals by a plan that allows intrastate transportation by its licensees under such circumstances that may result in the profitable handling of such articles within the State. As we have already suggested, it is not to be doubted but that the state might have set up and operated its own disposal plants. If this had been done, the effect would have been to divest such dead bodies of every semblance of merchantable property. Instead of adopting this means of coping with the problem, the General Assembly has authorized the plan embraced in the statute. It was apparently found that by licensing carriers and disposal plants, by-products might be salvaged sufficient to render the business profitable to the licensees, thereby relieving the state of the burden of dealing directly with the problem. * * *
> If a substantial percentage of these carcasses were exported from the state through the operation of interstate commerce, those remaining within the state might be so reduced in quantity that it would no longer be profit-

> able for licensees to operate their plants. The state would then be confronted with the problem of incurring great expense to dispose of those remaining, and this expense might well be increased by a reduction in the return from the by-products recoverable."

That the State could have gone into the disposal plant business itself, to the exclusion of private enterprise, does not establish that the State would have gone into such business, or would have been compelled to have gone into such business, but for the enactment of the statute in question. The reason thus advanced by the Supreme Court of Indiana is predicated upon conjecture and not fact.

But again, there is a more fundamental objection to the position thus taken by that Court: So long as carcasses of dead animals are objects of commerce (the Supreme Court of Indiana conceded that they had a commercial value, and its reasoning is predicated upon that fact), a State cannot lawfully confine dealings therein to its own residents and prohibit interstate commerce therein, irrespective of motive. In matters of commerce, due to the vitality of the commerce clause of the Constitution, the rights of the citizens of all the States are paramount to those of a single State.

To illustrate: In *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 55 L. ed. 716, the validity of a statute was in question that prohibited the construction of pipe lines for natural gas and the transportation of natural gas by such lines, excepting only by domestic corporations for destinations inside the state, and gave such domestic corporations the exclusive use of the highways. This Court, however, held that natural

gas, after severance from the earth, was a commodity that could be dealt in and was a legitimate subject of interstate commerce not to be restricted to state lines; saying (p. 255), by McKenna, J.:

> "Gas, when reduced to possession, is a commodity; it belongs to the owner of the land; and, when reduced to possession, is his individual property, subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce. * * * If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one state has it, all states have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that "in matters of foreign and interstate commerce there are no state lines." In such commerce, instead of the states, a new power appears and a new welfare,—a welfare which transcends that of any state. But rather let us say it is constituted of the welfare of all the states, and that of each state is made the greater by a division of its resources, natural and created, with every other state, and those of every other state with it. This was the purpose, as it is the result, of the interstate commerce

clause of the Constitution of the United States."

In the same opinion it was said (p. 257) that:

"to prohibit interstate commerce is more than to indirectly affect it".

And compare:

Minnesota v. Barber, 136 U. S. 313, 34 L. ed. 455;
Brimmer v. Redman, 138 U. S. 78, 34 L. ed. 862;
Voight v. Wright, 141 U. S. 62; 35 L. ed. 638;
Pennsylvania v. West Virginia, 262 U. S. 553, 67 L. ed. 1117;
Foster v. Haydel, 278 U. S. 1, 73 L. ed. 147;
Vandalia Coal Co. v. Special etc. Commission, 268 Fed. 572 (Ind.);
State ex rel. Corwin v. The Indiana etc. Co., 120 Ind. 575;
Manufacturers Gas etc. Co. v. Indiana etc. Co., 155 Ind. 545;
Shafer v. Farmers Grain Co., 268 U. S. 189, 199; 69 L. ed. 909, 915.

It may be noted that in earlier cases the Supreme Court of Indiana had recognized that the regulatory power of the State did not extend to discrimination against interstate commerce. In *Jamieson v. Indiana Natural Gas Co.*, 128 Ind. 555, that court held that natural gas being dangerous, the State could lawfully regulate its transportation; but that if it could be transported outside as well as within the State under

a safe pressure, the State could not lawfully bar its transportation to points outside the State, nor could the State lawfully establish one standard for intrastate transportation and a different and discriminatory standard for interstate transportation. Elliott, J., speaking for that Court, said (p. 575):

> "It is, no doubt, so far a commercial commodity that this state cannot prohibit its transportation to another State by direct legislation."

The regulatory statute was upheld because its rules operated upon all alike, without discrimination; the opinion saying:

> "There is one standard and no prohibition."

We submit that those provisions of the statute in question that restrict the transportation and sale of carcasses to residents of Indiana are directly aimed at the prohibition of interstate commerce in such carcasses while permitting intrastate commerce therein; that such provisions have no reasonable relation to the declared purposes of the legislation, are discriminatory, and as such, are invalid as in violation of the commerce clause of the Constitution; hence the judgment of the Supreme Court of Indiana should be reversed.

Respectfully submitted,

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January 31, 1939.

APPENDIX

CHAPTER 278, ACTS OF INDIANA, 1937

"Dead Animal Disposal Act"

AN ACT to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect. (Chapter 278, Acts of the 1937 Indiana General Assembly.)

Effective April 1, 1937.

CHAPTER 278.

(H. 258. Approved March 12, 1937.)

AN ACT to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect.

CARCASSES OF DEAD ANIMALS—TRANSPORTATION AND DISPOSAL—POLICY DECLARED.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That it is hereby declared to be the public policy of the State of Indiana, acting through its general assembly, to control and regulate the transportation over the highways of this state and the disposal of the carcasses of dead animals, not

slaughtered and intended for human food to the end that the spread of animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such carcasses and from such transportation and disposal thereof, if the same be not required by law; and this act is designed to effectuate such purposes and public policy, through the exercise of the public [police] powers of the state. This act shall be liberally construed to effect such policy and to promote such objects.

PERSONS—THINGS—TRANSACTIONS EXEMPT.

SEC. 2. Nothing contained in this act shall apply to or effect (affect) any of the following persons, matters, or vocations, to-wit:

(a) To any person slaughtering, butchering, manufacturing, or selling, in any manner, any animal flesh and products, where such animals are killed for the purpose of being used solely for human consumption, or to persons engaged in transporting and disposing of the dead bodies of any such animals so killed or of any parts or products thereof to any persons solely for such purpose and use.

(b) To any person transporting, disposing of, or selling the hides or skins of animals; or tanning such hides or skins for himself or other persons.

(c) To any bodies of dead fowls, birds, fish, reptiles, or small animals of any kind, such as dogs, cats and small game.

(d) To any governmental agency, collecting, transporting, or disposing of the bodies of any dead animals in any manner.

No provisions of any other laws or ordinances regulating any of the persons, matters or vocations aforesaid shall be affected or repealed by this act.

MEANING OF TERMS.

SEC. 3. That, as used in this act, unless a different meaning is required by the context and may be necessary to effectuate the purpose of this act, the following definitions shall apply:

PERSON.

(a) The term "person" shall include individuals of either sex, firms, co-partnerships, associations, joint ventures and corporations, of all kinds and places of residence, or any other group or combination acting in concert; and the plural, as well as the singular number; and whether acting as a principal, trustee, receiver, or as any other kind of legal or personal representative; or as the successor in interest, assign, agent, factor, servant, employee, director, officer, or any other representative of any such person.

GENDER.

(b) The masculine gender shall include the feminine and neuter genders; and the singular number shall include the plural number as to all words and phrases.

DISPOSAL PLANT.

(c) The term "disposal plant", or "plant", shall apply to and include any plant and all the equipment thereof described or referred to in any section of this act, that is constructed and intended to be operated for the disposal of the bodies of dead animals by means either of burying, or burning, or cooking, or other method herein prescribed, or hereafter provided for by law and not otherwise defined; and shall also include all substations of any such plant that are used in connection with such business solely for the temporary deposit or storage of such dead bodies that are transported thereto by a licensee pending final deliver [delivery] thereof to any such disposal plant; and shall also include all vehicles and equipment thereof used by a licensee for the transportation of such bodies to such plant for their disposal therein in any manner herein prescribed.

STATE VETERINARIAN.

(d) The term "state veterinarian" shall mean the officer now designated by statute under such name; and in the event of any subsequent change of such title, or duties, it shall be deemed to refer to and mean the particular official or body of this state designated by statute to succeed to and perform either the same or similar duties required under this act; or if not so designated by statute, the governor shall designate some official for such purposes.

DISPOSAL PLANT—OPERATION—LICENSE FOR —UNLAWFUL ACTS.

SEC. 4. (a) No person shall engage in this state in the business of operating a disposal plant, as herein

defined, without first obtaining for each such disposal plant so operated by him, or in his behalf, a license and any vehicle certificates required, as herein provided; and no person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, shall either transport over any highways of this state, or dispose of to any person, the bodies of any dead animals in ny manner herein prescribed, or in any other manner not permitted by law.

STATE VETERINARIAN—RECORD.

(b) The said state veterinarian shall keep a record of all applications for permits, licenses and vehicle certificates, showing all thereof issued, denied, or revoked by him, and such other facts as he may prescribe.

ACTS CONSTITUTING VIOLATIONS OF ACT.

SEC. 5. Any person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, who shall advertise either in any newspaper having a general circulation in any county of this state, wheresoever published, or in any manner by written, printed, typed or painted matter of any character, or by signs or any kind of other devices, whereby he shall indicate that he is engaged in transporting and disposing of dead animals in any manner and for any purpose not excepted in this act; or who shall obtain from any other person, by purchase or otherwise, the body of any such dead animal, in whole or in any part, for the purpose of transporting the same

over any highway of this state, and of disposing of the carcass, or the hide, skin, grease, or other products, of such dead animal, to any person or by any method designated to effect a profit therefrom for himself, shall be guilty of violating this act, and shall be subject to all the penalties of this act.

LICENSE—APPLICATION FOR—CONTENTS—FEE.

SEC. 6. Any person desiring a license to engage or continue in such business under this act, shall file an application for such license with the state veterinarian, on a form provided by him without charge, which application shall set forth the name and residence of the applicant, the location of his place of business, the particular method, or methods, which he intends to employ, or is employing, in the transportation and in the disposal of the bodies of such dead animals; the number and location of all substations he desires to operate, if any; the number and kind of vehicles he will use; and such other essential information relative thereto as such officer, by his rules and regulations, may require. Such application shall be accompanied by an initial installment of $100.00 on the total annual license fee, to apply upon the expenses imposed by this act: Provided, however, That any person, now having or operating a disposal plant, with or without any substations, and holding an annual license therefor, under existing law, shall be entitled to continue such operation until the date such license expires; but not later than thirty days prior to such date of expiration, he must apply for a license under this act, and pay the fees as herein provided, if he desires to continue such

business, without interruption, and thereby he shall have a right so to continue under his old license, by paying all annual fees, at the rates fixed by this act, until his new license under this act shall be granted, or if refused, until any such refusal shall be finally sustained upon any appeal taken by him from such decision.

LICENSE—APPLICANT—INVESTIGATION.

SEC. 7. (a) Upon receipt of such application, the state veterinarian, or some person appointed and designated by him, shall, within thirty days, if the applicant then is or has been the holder of a license under any prior statute in the conduct of an established business of such kind in this state, inspect the plant as herein defined, and the locality where such applicant is conducting or proposes to conduct such business, and shall ascertain whether or not such applicant is a responsible and suitable person, financially and otherwise, to be entrusted with a license to conduct such business, and that he has fulfilled and complied with the requirements of all the sections of this act and of the rules and regulations herein authorized relating to such business.

LICENSE—ISSUANCE—WHEN.

(b) If such state veterinarian shall find that such applicant is such a responsible and suitable person to conduct such business, and that the disposal plant of such applicant, as herein defined, and the methods of operation thereof, comply with all the provisions of this act and with the rules and regulations herein authorized, and that such business is located in a place

permitted by this act, he shall thereupon issue to such applicant a certificate to that effect. Thereupon such applicant shall pay to said state veterinarian the further and final installment of $50.00 for said annual license fee and said state veterinarian shall issue to such applicant a license and four vehicle certificates and metal discs bearing the applicant's name and license number, one of which discs shall be attached to each vehicle so used, which license shall entitle him to operate one disposal plant and which certificates shall entitle him to operate not more than four vehicles for transporting bodies in such business; Provided, however, That for each such additional vehicle the licensee desires to operate he shall pay an additional annual fee of $5.00 and procure an additional vehicle certificate and disc, and for each sub-station located elsewhere than on the grounds of the disposal plant he shall pay an additional annual license fee of $20.00 and procure a sub-station license: and Provided, further, That the full annual license and other fees specified in this act shall be paid for any licenses and vehicle certificates issued in any year on or prior to June 30, and one-half of all such fees shall be paid for the first year for any such license or vehicle certificate issued in any year after June 30.

LICENSES—EXPIRATION.

(c) All licenses and vehicle certificates issued under this act shall remain effective until and unless voluntarily surrendered, or suspended or revoked, as provided in this act; conditioned, however, upon payment to the state veterinarian on or before January 15 of each calendar year subsequent to the year of

issue, of the required total annual license and other fees herein provided for and specified, as aforesaid, which payment shall operate, without further application, to continue such licenses and vehicle certificates in full effect during each calendar year for which such license and other fees shall be paid, unless sooner surrendered, or suspended or revoked, as herein provided.

INSPECTIONS OF PLANT—WHEN—ADDITIONAL INSPECTIONS—FEES.

SEC. 8. (a) Whenever the state veterinarian, by his first inspection of the applicant's plant, as herein provided, shall find that the applicant has not complied with all the requirements of this act and of such rules and regulations, he shall at once notify the applicant in writing, delivered in person or by registered mail, with return receipt, specifying the particulars of such failure to comply therewith and of any further objections he may have. Upon being notified in like manner by the applicant in writing of such compliance and that such plant conforms to the requirements of this act and of such rules and regulations, the state veterinarian shall, within ten days, make a similar second inspection thereof, but shall not be required to make more than two of the aforesaid initial inspections of the same plant under one application and the original payment of fees, unless he so desires. If one or two inspections additional to the second inspection are desired by the applicant in effecting a compliance by him with the requirements of this act, such applicant shall request the same in writing and pay in advance additional inspection fees of $25.00 for each

such inspection so requested by him; but for any further such inspections he shall pay a fee of $100.00 each.

FEES—DISPOSITION.

(b) In the event such applicant shall be refused a license and such refusal be finally sustained upon any appeal, no part of the fees paid by him shall be refunded, but all thereof shall belong to the State of Indiana, as a part of its general fund.

DISPOSAL PLANTS—NEW OR RECONSTRUCTED—LICENSE—APPLICATION—CONTENTS—FEES.

SEC. 9. (a) Any person not owning or in control of and now operating an established plant, but desiring to engage in such business and to construct a new plant, or reconstruct and re-open a plant previously closed, shall first file with the state veterinarian, on a form furnished without charge by him, an application for a permit for such purpose, with such information as may be required, together with a set of detailed plans and specifications for the plant so proposed to be constructed, or reconstructed, and shall also pay therewith to the state veterinarian a fee of one hundred dollars to cover the additional expense of investigating and passing upon such application and as the initial payment upon the license fee, if granted or denied. Such applicant shall also set out a general statement of his proposed plant and method of operating said business and said plant, and shall show that it is proposed to be located or continued in a place permitted by this act. Said state veterinarian is authorized to submit such plans and specifications and other information to any qualified architects and engineers

employed in any other department of the state government, or if necessary, to submit the same to any such qualified person not employed by the state and to pay the latter out of the fee aforesaid a sum not exceeding $100.00 for examining such plans and specifications and advising him whether the same comply with the provisions of this act. The aforesaid initial and final payments shall be made regardless of the time in any year such application shall be filed.

VETERINARIAN—INSPECTION—LICENSE—FEE.

(b) If the state veterinarian shall find that such applicant is a responsible and suitable person to conduct such business and that such plans and specifications and proposed method and place of conducting such business comply with all the requirements of this act and of such rules and regulations, he shall thereupon issue to such applicant a permit to construct or reconstruct such plant. Upon the completion of such plant and before the same is placed in operation, such applicant shall notify the state veterinarian thereof, who shall thereupon make the same kind of inspections as are provided aforesaid for existing established plants, and in all respects the procedure established for such inspections and the issuance of a license, with the payment of the additional installment of $50.00 for the annual license fee and any required additional fees by such applicant, shall apply, and the license shall be either issued or denied in the same manner and subject to all the other provisions of this act; except that for each subsequent year the annual license and other fees shall be the same as for similar existing licensed plants.

NEW PLANTS—LOCATION.

SEC. 10. (a) No such new plant shall be located or constructed, or any discontinued plant reconstructed or re-opened, at any place in this state inside of, or within two miles of the nearest point of the corporate limits of any city or town; nor within one mile of the nearest boundary of the lands then owned or controlled in connection either with any state, county, township, city, or town park, or boulevard; or of any public school or hospital, or of any charitable, religious or educational institution.

EXISTING PLANT — DESTRUCTION — RECONSTRUCTION PROHIBITED—WHEN.

(b) In the event that any existing disposal plant shall have been or may be hereafter destroyed in any manner, except during the war, to the extent of at least two-thirds of the operating portion thereof, the same shall not be reconstructed and such site shall not be again used for such purpose, if it be located in or within the distance aforesaid from any of the places or objects designated in this section.

DEAD ANIMALS—HAULING—LICENSE.

SEC. 11. (a) No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business.

HAULING—LICENSE—QUALIFICATION.

(b) No license shall be issued to any person solely for the purpose of transporting the bodies of dead animals, but such transportation must be done solely by persons holding a license for disposal plants, so that such dead bodies may be properly and promptly disposed of under the requirements of this act; except that any public official of this state, charged by law with such duties, may remove or supervise the removal of any such dead bodies and the disposal thereof by any method provided for by this act where necessary to protect the public health and welfare.

HAULING—VEHICLES USED IN—SPECIFICATIONS.

(c) All vehicles used in the transportation of the bodies of dead animals, under the provisions of this act, shall have a tank or metal lining in the bed of such vehicle, or be otherwise so constructed that the same shall be practically watertight, so that no drippings or seeping from such dead bodies shall escape from such vehicles where this can be obviated; and all vehicles must have an end-gate constructed or lined with the same materials, and hinged at the bottom and fastened firmly at the top when closed and so designed, so far as practical, that drippings and seepings shall not escape from such part of said vehicle while engaged in such transportation; and every such vehicle shall have a bed of such depth and type of construction and equipment that any dead body or bodies therein shall be completely hidden from view of persons using the highways and any public nuisance obviated while being transported.

STATE VETERINARIAN—ADDITIONAL REGULATIONS—AUTHORIZATION.

(d) The state veterinarian may prescribe specific and also additional requirements, not inconsistent with the provisions and purposes of this act, governing and regulating such transportation and the construction, equipment, maintenance and operation of such vehicles.

VEHICLES—CLEANSING—DISINFECTION.

(e) After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies.

BODIES OF DISEASED ANIMALS—HAULING—DRIVER—DUTY.

(f) Vehicles, when loaded with the body of an animal which has died of disease, shall be driven directly to the place of disposal, except that the driver may stop on the highway for other like dead bodies, but he shall not drive upon the premises of any person unless he first obtains the permission of such person and he shall avoid creating any nuisance during such transportation and in the event any drippings or seep-

age should escape from such vehicle, to his knowledge, he shall clean up the same and remedy such escape, if possible to do so.

DEAD ANIMALS—BODIES—DUTY OF OWNERS OR PERSONS CARING FOR.

SEC. 12. No person owning or caring for any animal that has died from any cause shall allow the body to lie about his premises. Any such body shall be disposed of by such person within twenty-four hours after knowledge of such death, either to a person licensed under this act to dispose of it, as herein provided for disposal plants; or by the owner or person entitled to such body causing the same to be buried within that time upon his own or any other available premises, where the transportation of said body along any highway of this state is not required. Any such burial shall be so done as not to produce a nuisance, and such body shall be buried to such a depth that no part thereof shall be nearer than four feet to the natural surface of the ground and every part of such body shall be covered with at least four feet of earth in addition to any other materials that may be used for that purpose. Provided, however, That any person so owning or controlling any dead animal, that has not died of a contagious disease, shall have the right to remove the hide or skin thereof on his own premises before burying such body as herein prescribed, but such skinning must be done and the disposition of such hide, or skin and body must be made in a manner that will avoid the creation of any nuisance. No body of any dead animal shall be hereafter burned or cooked, or otherwise disposed of, except by burial as in this section pro-

vided, at any place in this state except at a disposal plant licensed as provided in this act; or as may be otherwise excepted by this act. Nothing contained in this act shall be so construed as to prevent any person, residing outside of the corporate limits of any city or town, from disposing of the dead bodies of animals belonging to such person, by burning or burying such dead animals on the premises of such owner. Provided, further, That no person shall bury or burn the body of any dead animal within the corporate limits of any city or town, where the same is prohibited by law or ordinance.

DISPOSAL PLANTS—SPECIFICATIONS.

SEC. 13. No disposal plant shall be deemed a suitable or sanitary place for disposing of the bodies of dead animals by any process of cooking or burning, unless it conforms to the following minimum specifications:

BUILDING.

(a) The building must have four (4) walls complete and be provided with concrete or cement floors and with good drainage and be thoroughly sanitary in construction and maintainence [maintenance] and any sewage, drainage, or waste water of any kind, if of an offensive or obnoxious character or odor, detrimental to human, animal, agricultural or aquatic life, or that may constitute a public nuisance, shall not be permitted to escape therefrom until first treated as herein specified. All sewage, drainage, or waste water must first pass through a septic tank or a filter bed or covered settling pool, that will destroy all infection therein

before passing therefrom and must not thereafter, at any time, empty or pass into any body of water, or any stream other than a running stream, or if emptying upon the ground, on the premises, of said plant, it must be absorbed by the soil and not be allowed to collect in open pools, or in any other manner so as to create a public nuisance.

EQUIPMENT.

(b) All such plants must be properly equipped and operated with steel tanks, enclosed dryers and cold water condensers, and on and after January 1, 1940, all bodies shall be reduced only by steam cooking in all plants operating in this state; except in emergencies, where burning may be permitted under regulations prescribed therefor by the state veterinarian.

TANKS.

(c) All tanks shall be airtight, except proper escapes for live steam, passing through the tanks during cooking, which steam shall be condensed by use of cold water condensers. All such equipment shall be so construed (constructed) and maintained as to prevent any avoidable escape of odors into the air.

DRY RENDERING.

(d) If a method of dry rendering is used, the heads and discharge doors of the vessels shall be of a type using gaskets, with the doors drawn tight with bolts against such gaskets, and with packing boxes around the agitator shafts, and with vent for drawing off condensation, so constructed that the discharge shall

be condensed by the use of cold water condensers of sufficient capacity, and with all thereof and every other part and opening in such equipment so constructed and maintained that there will be no avoidable escape of odors into the air.

DISPOSAL OF BODIES—TIME LIMIT—EXCEPTIONS.

(e) All skinning and dismembering of bodies shall be done within such building and in such manner and shall be so kept therein that no unnecessary annoyance shall be caused other persons by the conditions or unsightly appearance of such bodies of any parts and contents thereof; and all such bodies and all parts and contents thereof, shall be disposed of within twenty-four hours after delivery to such plant by some method herein specified; except where rendered impossible by accident or other casualty preventing the operation of the plant, or except where some epidemic or act of God has caused more bodies to be accumulated than can be reasonably disposed of within such period of time by the continuous operation of the plant; in any of which events the plant shall be placed in operation as soon as possible and shall be operated continuously until all bodies are disposed of.

BURNING—REGULATIONS.

(f) In the event any bodies, or parts thereof, are disposed of at such plant at any time by burning, the place and equipment used therefor shall be so located, constructed, arranged, maintained and operated that no avoidable odors will escape into the air; and all portions of such bodies not so entirely consumed, or

that may be otherwise left undisposed of, shall be buried, as herein provided.

BURIAL OF BODIES—DUTY.

(g) In the event any bodies, or parts of bodies, are disposed of at said plant by burying the same, this shall be done in the same manner and period of time after receiving the same as is provided in this act such (for) such burial by the owner or person controlling such bodies prior to disposition thereof to any such plant.

NUISANCE PROHIBITED.

(h) Such disposal plant shall be so situated, constructed and maintained and all operations therein so conducted at all times as not to create and continue unnecessarily a public nuisance.

RULES AND REGULATIONS—EFFECTIVE—WHEN.

SEC. 14. The state veterinarian shall make, publish and enforce such reasonable rules and regulations relating to such disposal plants and dead bodies and all matters connected therewith, as he may deem advisable and which are not inconsistent with any of the provisions of this act. All such rules and regulations shall be in writing or printed and two copies thereof shall be sent to each person holding or receiving a license under this act, also to the clerk of each county in this state, which rules shall be forthwith spread of record and properly indexed for reference thereto, and no such rule or regulation, or any subse-

quent changes therein, shall be effective until ten days after such copies shall have been mailed to the last of such county clerks and to each such licensee, a record of which mailing shall be entered by such state veterinarian on his records. Such rules and regulations shall have the force and effect of law and all persons within the provisions of this act shall obey and comply therewith.

STATE VETERINARIAN—PLANTS—INSPECTION OF—DUTY.

SEC. 15. The state veterinarian, in person or by anyone authorized by him, shall inspect each plant and place licensed under this act at least once each year, and as often as he may deem necessary, and shall see that the licensees and all other persons comply with this act and conduct such business in conformity to this act and to the rules and regulations made and published by him pursuant thereto.

LICENSES — SUSPENSION — REVOCATIONS — GROUNDS — HEARING—PROCEDURE—ORDER —APPEAL—PROCEDURE.

SEC. 16. The state veterinarian shall have power to suspend for any fixed period, or to revoke the license held by any licensee under this act, in the event such licensee shall violate and fail or refuse to obey any of the provisions of this act, or of the aforesaid rules and regulations; or in the event any licensee has been finally convicted of violating the laws of this state or of the United States in any manner affecting his conduct of said business; or in the event the state board

of health shall certify in writing to the state veterinarian that any particular disposal plant is a menace to the public health, stating the charges specifically and definitely, in which case the hearing hereinafter provided for shall be held within thirty days after such charges of said board are so filed: Provided, however, That before any license shall be suspended or revoked, the licensee shall be furnished with a written copy of the charges made against him and a hearing shall be had before the state veterinarian, or his authorized representative, at such time and place as he may fix, upon at least ten (10) days notice in writing to the licensee, to determine whether such license shall be suspended or revoked, which notice may be served either by registered mail, with return receipt, addressed to such licensee at the address shown in his application, or in the manner provided by law for the service of a summons. At the time and place fixed for the hearing, the licensee may appear in person and by counsel and such charges shall be deemed denied, without any answer thereto, unless the licensee desires to file an answer. The hearing shall be conducted in a summary manner, under such procedure as the rules and regulations may prescribe, and the state veterinarian, or his representative, shall receive and hear all the evidence and arguments offered by both parties and shall afford the licensee full opportunity to present all defenses available to him. When a hearing under this section is conducted before a representative of the state veterinarian, a written report and summary of the evidence at such hearing shall be made by him to the state veterinarian, with recommendations for action thereon. The state veterinarian, after such hearing

before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order in the premises as he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license, which order shall be entered on his records and written notice thereof shall be forthwith mailed by registered mail, with return receipt, to or served personally upon such licensee: and, Provided, further, That any licensee affected adversely by any such decision and order of the State veterinarian may appeal therefrom to the Circuit Court or Superior Court of the county in which the plant is operated by the licensee, by filing in such court, at any time within thirty days after the day on which such decision and order is entered of record, a complaint to rehear such charges, which complaint shall name the state veterinarian as the sole defendant and shall be sufficient if it set out a copy of the charges of any answer filed, upon which such hearing was conducted, and recite generally the conduct of such hearing and the decision and order made therein and pray for a new hearing and judgment by the court. The party appealing shall file at said time, with the complaint, a bond, with such surety or sureties as the clerk of such court may approve, conditioned to pay all costs if such appeal be decided adversely to the appellant, and he shall also cause a summons to be issued and served upon such state veterinarian, as in other civil actions. Either the attorney-general of the state, or the prosecuting attorney of said county, or both, upon notice from the defendant, shall appear for such state veterinarian and defend such appeal. A motion to dismiss said appeal may be filed by the

defendant, if it be not perfected in time, but no further pleadings shall be required, and the allegations of such complaint shall be deemed denied. The appellant shall have the right to inspect and obtain copies of any of the proceedings, papers and records in the office of said state veterinarian or under his control, applicable to or affecting such hearing and appeal. Such appeal shall be placed on the advance calendar and heard as soon as possible, and if the court be in vacation, the same may be heard at any time by the judge thereof, or by any other judge designated and appointed by him, in the same manner and with the same effect as if all such proceedings were conducted in term. The court shall hear and conduct said appeal *de novo*, as a civil action, upon all the issues; and either party shall be entitled to offer all competent evidence relevant thereto, and the court shall be governed in all other respects by the procedure and rules governing the trial of civil causes; except that such appeal shall be tried and decided solely by the court, and either party may have a change of judge, but there shall be no change of venue from the county. The court shall make a general finding and render judgment thereon and shall have the power to reverse, affirm, or modify, in whole or in part, the decision and order appealed from, and a certified copy of such judgment, when final, shall be filed with said state veterinarian, who shall enter the same of record and in all things comply therewith. Either party to such proceedings may appeal from the decision and judgment of such court to the Appellate Court of Indiana, as in other civil causes, and such appeal shall operate as a stay of such judgment until finally determined.

LICENSE—SUSPENSION—REVOCATION—ORDER —WHEN EFFECTIVE.

SEC. 17. (a) No decision of the state veterinarian suspending or revoking any license shall become effective until the expiration of the period of thirty days allowed for appealing from such decision; and in the event of any such appeal to the lower court, or thence to the Appellate Court by either party, such decision shall not become effective until any such appeals are finally determined, as aforesaid.

COMPLIANCE WITH ACT.

(b) Pending any proceeding to suspend or revoke any license, or any appeal from any decision therein, every person affected thereby shall continue to comply with this act, and such compliance may be enforced then and at all other times by any appropriate action in the name of the State of Indiana, which shall be filed and conducted by the attorney-general upon written request of the state veterinarian.

VIOLATION OF ACT—PENALTIES.

SEC. 18. The violation of any of the provisions of this act, or the rules and regulations made in pursuance thereof, is hereby made a misdemeanor and any person, upon conviction thereof, shall be punished by a fine of not less than $25.00, nor more than $100.00, for the first offense; and by a fine of not less than $100.00, nor more than $500.00, for the second offense; and for any subsequent offense, in addition to the fine provided for a second offense, there may be added imprisonment in the county jail for not more than ninety days.

FEES—DISPOSITION—STATE VETERINARY DISPOSAL PLANT FUND—APPROPRIATION.

SEC. 19. All monies received by the state veterinarian under this act shall be reported by him to the auditor of state, at the end of each month or at such other time as may be prescribed by law, and at the same time he shall deposit the entire amount of such receipts with the treasurer of state for deposit in the state general fund, but all monies so received shall be paid into a special continuing account of such general fund to be known as "state veterinary disposal plant fund", and shall be available for the payment of all the necessary expenses in carrying out all the provisions of this act, which payment shall be made as now or hereafter provided by law: Provided, however, That at the close of each fiscal year any sum of money in said special account in excess of five thousand dollars ($5000.00), shall revert to the general account of the state general fund. For the purpose of providing a fund to administer this act until sufficient monies are received from license fees, the sum of five thousand dollars ($5000.00), or so much thereof as may be necessary, is hereby appropriated to the aforesaid special account out of any monies in the state treasury not otherwise appropriated, to be available from the date that this act takes effect for a period ending June 30, 1939.

SEPARABILITY.

SEC. 20. Should any section, or any clause, sentence, provision, phrase, or word of any section of this act be declared invalid for any reason, or be repealed, the validity of any and all other portions and pro-

visions of this act shall not be affected thereby; but it is hereby declared that each and all of such other portions and provisions would have been enacted if any or all of such invalid or repealed portions or provisions had not been contained herein, and all such remaining portions and provisions shall be construed, if possible so to do, so as to uphold and effectuate the purpose and effect of this act in all matters covered thereby.

SPECIFIC AND GENERAL REPEAL.

SEC. 21. That each of the following acts, or parts of acts, and all acts amendatory thereof or supplemental thereto, be and each is hereby specifically repealed, to-wit: Acts of 1905, section 592½ of Chapter 169; Acts of 1913, Chapter 111; Acts of 1913, section 8 of Chapter 135; and Acts of 1935, Chapter 205; and generally all laws and parts of laws in conflict herewith are hereby repealed.

CONSTRUCTION OF ACT.

SEC. 22. This act, or any provision thereof, shall not be construed as being repealed by implication by any other act passed at the same time or subsequent to it at this session of the general assembly, but any repeal thereof shall require a specific reference to this act by its title and date of approval. Except as it may be so specifically repealed, this act shall control in all its provisions over any other act passed as aforesaid, at this session, in the event of any conflict therein, if such provisions in any or all such acts cannot be reconciled so all may remain effective: Provided, however, That in the event any other act passed

at any time should provide generally that license fees shall be payable for an annual period beginning either with the state fiscal year, or with any other date than the calendar year, then the respective months of such annual period corresponding in order to January and June, as designated in this act for such payments, shall be substituted for the latter said months as the times for payment of license fees and other charges hereunder, and the last day of the month ending any semi-annual period shall be used in computing such period.

EFFECTIVE DATE.

SEC. 23. This act shall be in full force and effect on and after April 1, 1937.

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